

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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In the Matter of)
)
Amendment of Part 90 of the Commission's)
Rules to Provide for the Use of the 220-222 MHz)
Band by the Private Land Mobile Radio Services)
)
Implementation of Sections 3(n) and 332)
of the Communications Act)
)
Regulatory Treatment of Mobile Services)
)
Geographic Partitioning and Spectrum)
Disaggregation for the 220-222 MHz Service)
)

PR Docket No. 89-552

GN Docket No. 93-252

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

PETITION FOR PARTIAL RECONSIDERATION

Intek Global Corp. ("Intek"), by its counsel and pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. §1.429, hereby petitions the Commission for partial reconsideration of its *Fifth Report and Order* in the above-captioned proceedings.¹ In particular, Intek requests that the FCC reconsider that portion of paragraph 24 of the *Fifth R&O* which provides that licensees that agree to share the responsibility for meeting the construction obligations on a partitioned Phase II 220 MHz band license may be subject to license cancellation for a failure by either party to meet its portion of the construction obligation. As set forth below, Intek believes that this construction co-dependency will deter licensees from fully utilizing geographic partitioning to enhance the services available to the public within their licensed service area. As a result, construction co-dependency will deter innovation in the

¹ *Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services (Fifth Report and Order)*, FCC 98-186 (August 6, 1998) ("*Fifth R&O*"). A summary of the *Fifth R&O* was published in the Federal Register on September 15, 1998.

partitioning of licenses by Phase II licensees and likely result in a less efficient utilization of the spectrum. Intek, thus, urges that the Commission permit Phase II licensees to request in their applications to partition their licenses that the construction obligations between the partitioning parties be split within their respective service areas, and that the validity of one license not be dependent upon the satisfaction by the other licensee of its construction obligations. Intek suggests that an appropriate showing to justify the severing of the construction dependency would include information to support the conclusion that the request is to partition the license between sincere applicants and not to avoid application of the construction obligations of Sections 90.767 or 90.769 of the Rules.

Intek's subsidiary, Intek License Acquisition Corp. ("ILAC") has been to date the most active-bidder in the Phase II 220 MHz auction. Any licenses acquired by ILAC in the auction would be subject to the partitioning and disaggregation rules established in the *Fifth R&O*. Intek is thus directly affected by the provision of those Rules for which it seeks FCC reconsideration.

In its *Fifth R&O* (at para. 1), the Commission found "[o]ur goal in amending these rules [to permit geographic partitioning and disaggregation] is to allow the 220 MHz service the competitive benefits we believe can be achieved by allowing licensees to partition and disaggregate – more efficient use of spectrum, increased opportunities for a variety of small, minority-owned and women-owned businesses, to participate in the provision of 220 MHz service and expedited delivery to unserved areas." Intek agrees with these conclusions, and, indeed, believes that partitioning and disaggregation hold much promise for promoting the entry of new businesses into the land mobile industry and encouraging the innovation of new services and technologies.

In Paragraph 24 of the *Fifth R&O*, the Commission stated:

We agree with AMTA that the parties involved should have the flexibility to determine their respective responsibilities for satisfying the Commission's construction requirements. As long as the parties' collective obligations provide the requisite system coverage, we believe that the public interest in having the system built-out will be met. Specifically, if an assignee certifies that it will satisfy the same construction requirements as the original licensee, then the assignee must meet the prescribed service requirements in its partitioned area (or for its disaggregated spectrum) while the original licensee would be responsible for meeting those requirements for the area (or for the spectrum) it has retained. Alternatively, if one party (generally the original licensee) certifies that it will meet all future construction requirements, the other party need only demonstrate that it is providing "substantial service" for its remaining license. Moreover, consistent with other wireless services, in the event that both parties agree to share the responsibility for meeting the construction requirement and either party fails to do so, both parties' licenses will be subject to forfeiture. If one party agrees to take responsibility for meeting the construction requirement and later fails to do so, that party's license will be subject to forfeiture, but the other party's license will not be affected.

(Footnotes omitted.) Under these Rules, which are codified in Section 90.1019 (e), a licensee interested in partitioning must decide whether to retain the construction obligation and meet the obligation for construction in its reduced service area (which is obviously proportionately more difficult the more significant the area or population to be partitioned) or to share the construction obligation with an independent third party and risk loss of its license for the failure of that third party to meet its obligations. Intek believes that both of these options are commercially undesirable, and thus likely to lead to a third option, simply the decision to refrain from partitioning in any significant respect except possibly with parties that are well established and to whom recourse would be available for a failure to meet its construction obligation. Intek notes, moreover, its expectation that most parties interested in partitioning Phase II 220 MHz band licenses are likely to be small businesses. Indeed, only seven parties bidding for Phase II licenses in the auction (of 54 bidders) did not qualify for a small or very small business discount.

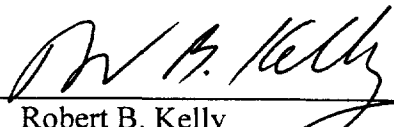
Accordingly, Intek believes that the construction co-dependency between partitioning licensees that is established by Paragraph 24 is directly contrary to the Commission's goals and may largely defeat the flexibility otherwise provided to licensees through geographic partitioning. By providing for construction co-dependency, the *Fifth R&O* likely will result in only the marginalized use of partitioning and disaggregation, and provide opportunities only for existing and established industry participants. This, in turn, will delay the availability of 220 MHz band service in areas that may otherwise be more quickly served by niche and targeted small businesses and will result in a less efficient use of the spectrum.

Intek understands that the purpose of construction co-dependency is to ensure that a Phase II licensee does not avoid its construction requirements simply by partitioning them away to a third party unlikely to construct facilities and provide service. In Intek's view, this objective can be accomplished through measures less onerous than co-dependency. In particular, Intek urges the Commission to permit Phase II licensees seeking to partition their licenses to request severed but mutual construction obligations between the partitioning parties by showing the bona fide nature of the partitioning request. Relevant information in this showing could include information relating to the respective partitioned service areas (population, markets, etc.) and information pertaining to the partitioning parties. The Commission's processing of the partitioning application would be no different than its processing of any application which, under the Communications Act, requires a finding that grant of the application would serve the public interest. The Commission, of course, would retain its discretion to deny any particular partitioning application, or to impose co-dependency on a case-by-case basis. Intek believes this process would be more administratively efficient than processing waiver requests of Section 90.1019(e) each time a licensee wished to sever the construction co-dependency. Alternatively,

the Commission simply could provide that parties seeking to partition prior to a certain date (for example, three years after license grant) could partition without being subject to construction co-dependency. This would also avoid "last minute" partitioning to avoid application of the construction deadline.

For these reasons, Intek respectfully urges the FCC to reconsider Paragraph 24 of its *Fifth R&O* and to adopt modifications to Section 90.1019(e) of its Rules consistent with the views expressed herein.

Respectfully submitted,
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